

APPEAL NO. 021675
FILED AUGUST 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 17, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) sustained a repetitive trauma injury in the course and scope of his employment; that the date of the injury is on or before _____; and that the respondent/cross-appellant (carrier) is relieved of liability under Section 409.002, because the claimant failed to timely notify his employer pursuant to Section 409.001. The claimant appealed the hearing officer's determination as to the date of injury and that he failed to timely report the injury to his employer, thereby relieving the carrier of liability. The carrier responded, urging affirmance. The carrier appealed the hearing officer's determination that the claimant sustained a repetitive trauma injury in the course and scope of his employment. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a repetitive trauma injury in the course and scope of his employment with a date of injury being on or before _____, and that the carrier is relieved of liability under Section 409.002, because the claimant failed to timely notify the employer pursuant to Section 409.001. The issues presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge